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1CHAPTER 482E-1
1FRANCHISE INVESTMENT LAW1

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1482E-1-Purposeintent.1 The
purpose of this chapter is to regulate the sale of franchises
in
the State to minimize losses to the franchisee in cases where
the franchisor or the franchisor's representative has not
provided full and complete information regarding: (1)the
details of the
contract between franchisor and franchisee; and (3)provide
each prospective franchisee with the information
necessary to make an intelligent decision regarding franchises
being offered; (2)protect the franchisor or
subfranchisor by providing a better understanding of the
relationship between the franchisor or subfranchisor and the
franchisee with regard to their business relationship.

1482E-2Definitions.1 As used in this

chapter and unless a different meaning appears from the context:

"Area franchise" means any contract or agreement between a franchisor or subfranchisor whereby the subfranchisor is granted the right to sell or negotiate the sale of franchises in the name or on behalf of the franchisor.

"Community interest" means a continuing financial interest between the franchisor and franchisee in the operation of the franchise business.

"Director" means the director of commerce and consumer affairs.

"Franchise" means an oral or written contract or agreement, either expressed or implied, in which a person grants to another person, a license to use a trade name, service mark, trademark, logotype or related characteristic in which there is a community interest in the business of offering, selling, or distributing goods or services at wholesale or retail, .FO ? leasing, or otherwise, and in which the franchisee is required to pay, directly or indirectly, a franchise fee.

"Franchise broker or selling agent" means a person who directly or indirectly engages in the sale of franchises.

"Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchise agreement, including, but not limited to, the payment either in lump sum or by installments of an initial capital investment fee, any fee or charge based upon the amount of goods or products purchased by the franchisee from the franchisor or subfranchisor, any fee or charges based upon a percentage of gross or net sales whether or not referred to as royalty fees, any payment for goods or services, or any training fees or training school fees or charges; however, the following

shall not be considered payment of a franchise fee: (1) the wholesale price; (2) the wholesale price of such goods; (3) the loan to the franchisee from the franchisor; (4) the retail price subject to a bona fide wholesale transaction; (5) the purchase or lease or agreement to purchase or lease real property necessary to enter into the business or to continue the business under the franchise agreement at the fair market value.

"Franchisee" means a person to whom a franchise is offered or granted.

"Franchisor" means a person who grants a franchise to another person.

"Offer or offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise.

"Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it includes any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

"Sale or sell" includes every contract of sale, contract to sell, or disposition of a franchise.

"Subfranchisor" means a person to whom an area franchise is granted.

3482E-30 offering circular.3 (a) the use of the public figure in the name or symbol of the franchise or (B)(a) or the amended offering circular required under subsection 437.

(4) The offer or sale to a franchisee or prospective franchisee where the franchisee or prospective franchisee is not domiciled in this State and where the franchise business will not be operated in this State.

(5) The extension or renewal of an

existing franchise or the exchange or substitution of a modified

or amended franchise agreement or the transfer of the location of a franchise where there is no interruption in the operation of the franchise business of the franchisee, and no material change in the franchise relationship.

(6) The offer or sale of an additional franchise to an existing franchisee of the same franchisor.

(7) The offer or sale of a franchise by a franchisee for the franchisee's own account, or the issuance of a new franchise agreement pursuant to a sale by a franchisee for the franchisee's .FO ?

own account, if the sale is an isolated sale and not part of a plan of distribution of franchises.

(b) The director may by rule or order exempt from sections Every person selling franchises in this State shall at all times keep and maintain a complete set of books, records, and accounts of such sales and shall thereafter at such times as are required by the director make and file in the office of the director a report setting forth the franchises sold by it and the proceeds derived therefrom.

(b) It is unlawful for any person in connection with the offer, sale, or purchase of any franchise directly or indirectly:

(1) To make any untrue statement of a material fact in any offering circular or report filed with the director under this chapter or wilfully to omit to state in any offering circular or report, any material fact which is required to be stated therein.

(2) To sell or offer to sell a franchise in this State by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading.

(3) To employ any device, scheme, or

artifice to defraud.

(4) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(5) To violate any order of the director.

(c) Any person who is engaged or hereafter engaged directly or indirectly in the sale of a franchise or in business dealings concerning a franchise, either in person or in any other form of communication, shall be subject to this chapter, shall be amenable to the jurisdiction of the courts of this State and shall be amenable to the service of process as provided by law and rule. Every person who sells a franchise in this State, other than a Hawaii corporation, shall file with the director in such form as the director by rule prescribed, an irrevocable consent appointing the director or the director's successor in office to be the person's attorney, to receive service or any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor, executor, administrator, or personal representative which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing consent. A person who has filed such a consent in connection with a previous sale under this law need not file another. Service may be made by leaving a copy of the process in the office of the director but it is not effective unless:

(1) The plaintiff, who may be the director, in a suit, action, or proceeding instituted by the plaintiff forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last address on file with the director; and
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(2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further times as the court allows.

(d) In any proceeding under this

chapter, the burden of proving an exception or an exemption from a definition is upon the person claiming it.

6482E-6 Relationship between franchisor or subfranchisor and franchisee.6 Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the franchisor or subfranchisor and its franchisees:

(1) The parties shall deal with each other in good faith.

(2) For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition for a franchisor or subfranchisor to:

(A) Restrict the right of the franchisees to join an association of franchisees.

(B) Require a franchisee to purchase or lease goods or services of the franchisor or from designated sources of supply unless such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds. Suppliers suggested or approved by a franchisor as meeting its standards and requirements shall not be deemed designated sources of supply.

(C) Discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that any classification of or discrimination between franchisees is:

(i) Based on franchises granted at materially different times, and such discrimination is reasonably related to such differences in time;

(ii) Is related to one or more programs for making franchises available to persons with insufficient capital, training, business experience, education or lacking other qualifications;

(iii) Is related to local or regional experimentation with or variations in product or

service lines or business formats or designs;

(iv) Is related to efforts by one or more franchisees to cure deficiencies in the operation of

franchise businesses or defaults in franchise agreements; or

(v) Is based on other reasonable distinctions considering the purposes of this chapter and is not arbitrary.

(D) Obtain money, goods, services, anything of value, or any other benefit from any other person with whom the franchisee does business on account of such business unless the franchisor advises the franchisee in advance of the franchisor's intention to receive such benefit.

(E) Establish a similar business or to grant a franchise for the establishment of a similar business at a location within a geographical area specifically designated as the exclusive .FO ?

territory in a franchise previously granted to another franchisee in a currently effective agreement, except under the circumstances or conditions prescribed in such agreement. The fact that other franchisees or the franchisor may solicit business or sell goods or services to people residing in such geographical territory shall not constitute the establishment of a similar business within the exclusive territory.

(F) Require a franchisee at the time of entering into a franchise to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter. Any condition, stipulation or provision binding any person acquiring any franchise to waive compliance with any provision of this chapter or a rule promulgated hereunder shall be void. This paragraph shall not bar or affect the settlement of disputes, claims or civil suits arising or brought under this chapter.

(G) Impose on a franchisee by contract, rule, or regulation, whether written or oral, any unreasonable and arbitrary standard of conduct.

(H) Terminate or refuse to renew a

franchise except for good cause, or in accordance with the current terms and standards established by the franchisor then equally applicable to all franchisees, unless and to the extent

that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is reasonable, is based on proper and justifiable distinctions considering the purposes of this chapter, and is not arbitrary.

For purposes of this paragraph, good cause in a termination case

shall include, but not be limited to, the failure of the franchisee to comply with any lawful, material provision of the

franchise agreement after having been given written notice thereof and an opportunity to cure the failure within a reasonable period of time.

(I) Refuse to permit a transfer of

ownership of a franchise, or of a proprietorship, partnership, corporation or other business entity that is a franchisee or subfranchisor, except for good cause. For purposes of this paragraph good cause shall include, but not be limited to:

(i) The failure of a proposed

transferee to meet any of the franchisor's or subfranchisor's reasonable qualifications or standards then in effect for a franchisee or subfranchisor;

(ii) The fact that the proposed

transferee or any affiliated person of the proposed transferee is a competitor of the franchisor or subfranchisor;

(iii) The inability or unwillingness of the proposed transferee to agree in writing to

comply with and be bound by all lawful obligations imposed by the franchise, including without limitation all instruction and

training obligations, and to sign the current form of franchise

agreement used by the franchisor or subfranchisor; and

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(iv) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor and to cure any default in the franchise agreement or

other agreements with the franchisor existing at the time of the proposed transfer.

A franchisor or subfranchisor shall have thirty days after being notified in writing of a proposed transfer to approve or disapprove in writing a proposed transfer of ownership or control of a franchise, or of a proprietorship, partnership, corporation or other business entity that is a franchisee or subfranchisor, stating its reason for disapproval. If a franchisor or subfranchisor fails to approve or disapprove a proposed transfer in writing within such period, the franchisor or subfranchisor shall be deemed to have approved such transfer.

(3) Upon termination or refusal to renew the franchise the franchisee shall be compensated for the fair market value, at the time of the termination or expiration of the franchise, of the franchisee's inventory, supplies, equipment and furnishings purchased from the franchisor or a supplier designated by the franchisor; provided that personalized materials which have no value to the franchisor need not be compensated for. If the franchisor refuses to renew a franchise for the purpose of converting the franchisee's business to one owned and operated by the franchisor, the franchisor, in addition to the remedies provided in this paragraph, shall compensate the franchisee for the loss of goodwill. The franchisor may deduct from such compensation reasonable costs incurred in removing, transporting and disposing of the franchisee's inventory, supplies, equipment, and furnishings pursuant to this requirement, and may offset from such compensation any moneys due the franchisor.

(4) The provisions of this chapter shall apply to all written or oral arrangements with the franchisee including but not limited to the franchise offering, the franchise agreement, sales of goods or services, leases and mortgages of real or personal property, promises to pay, security interest, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such arrangements in which the franchisor or subfranchisor has any direct or indirect interest.

(5) In any proceedings damages may be

based on reasonable approximations but not on speculation.

10482E-7Repealed.10

10482E-8Duties of the director.10

(a)(e) of this section to escrow or impound franchise fees and other funds paid by the franchisee or subfranchisor, or to furnish a surety bond approved by the director.

(b) Upon the entry of a stop order under any part of subsection91, from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out this chapter including rules and forms governing .FO ? offering circulars and reports and defining any terms whether or not used in this chapter insofar as the definitions are consistent with this chapter.

(e) If the director finds that the applicant has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the franchise proposed to be sold, the director may require the escrow or impoundment of franchise fees and other funds paid by the franchisee or subfranchisor, until the obligations are fulfilled, or the furnishing of a surety bond approved by the director, if the director finds that the requirement is necessary and appropriate to protect prospective franchisees or subfranchisors.

10482E-9Civil liability.10 (a)482E-6

shall constitute an unfair or deceptive act or practice under chapter482E-5(b) rescission is not available to the plaintiff if the defendant proves that the plaintiff knew the facts concerning the untruth or admission or that the defendant exercised reasonable care and did not know or if the defendant had exercised reasonable care would not have known of the untruth or admission.

(c) The suit authorized under subsection(a) and (b) as to all matters which said judgment or decree would be an estoppel between the parties thereto.

11482E-10Repealed.11

11482E-10.5-Civil penalty.11 (a) The director may bring an action to recover a civil penalty against any person who violates this chapter or who has knowingly violated a rule or order made pursuant to this chapter. A civil penalty of not more than \$100,000 may be assessed.

(b) No civil action may be brought under this chapter later than five years subsequent to the date of the violation or two years subsequent to the discovery of facts constituting the violation, but in no event shall any civil action be brought later than seven years subsequent to the date of the violation.

11482E-10.6-Criminal penalties.11 (a) Violations of this chapter shall be as follows:

(1) An offense in which the total value of all money and anything else of value paid by or lost by the victim pursuant to the same scheme, plan, or representation, or to the same entity, amounts to less than \$5,000, shall be a class C felony.

(2) An offense in which the total value of all money and anything else of value paid by or lost by the victim pursuant to the same scheme, plan, or representation, or to the same entity, amounts to \$5,000 or more, shall be a class B felony.

(b) In addition to the penalties provided in subsection (a), any person who violates this chapter

shall forfeit to the State any interest or property acquired or maintained in connection with the violation, and any interest, security, claim, or property or contractual right of any kind affording a source of influence over any enterprise which was established, operated, controlled, conducted, or joined in connection with the violation.

(c) The value of all money and anything else of value paid or lost by more than one victim pursuant to the same scheme, plan, or representation, or to the same entity, may be aggregated in determining the class or grade of the offense.

(d) Upon conviction of a person under this chapter, the circuit court shall authorize the county attorney or prosecutor, or the attorney general, as the case may be, to seize all property or other interest declared forfeit pursuant to subsection (b) upon such terms and conditions as the court shall specify. The State shall dispose of such property or other interest as soon as feasible making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable so as to be of value to the State, it shall remain in the possession of the State and the director shall dispose of it as deemed proper by the director; provided that the violator shall not benefit from any such disposal.

(e) Notwithstanding any other law to the contrary, a person who has been convicted of a felony under this section, or has had a prior conviction for a crime which would constitute a felony under this section, shall be sentenced to a mandatory minimum period of imprisonment of one year without possibility of parole. Nothing in this subsection shall be construed to in any way limit the maximum term of imprisonment provided under chapter 706.

(f) Notwithstanding any other laws to the contrary, the following time limitations shall apply to prosecutions for felony violations of this chapter:

(1) Prosecution for a felony under this

chapter shall be commenced within five years after the offense is committed.

(2) If the period prescribed in paragraph (1) has expired, prosecution for a felony under this chapter may be commenced within two years after the discovery of the offense by an aggrieved party who is not a party to the offense, but in no event shall prosecution commence more than seven years after the offense is committed.
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13482E-10.7-Violation of chapter; cease and desist order.13 (a) Whenever it appears to the director that any person has engaged in or is about to engage in any act or practice constituting a violation of this chapter, or any order or rule issued or adopted thereunder, the director may issue a cease and desist order to enforce compliance with this chapter or any such order or rule. The director shall have the discretion to determine the disposition of any executory contracts entered into by the respondent and shall specify in the order whether existing executory contracts shall be suspended or completed.

(b) Upon the issuance of an order under subsection (a), the director shall promptly notify the respondent that the order has been issued and the reasons therefor; that the respondent shall have thirty days to request a hearing in writing; and that if a hearing is requested, the hearing shall commence within fifteen business days of the request, unless extended by the director for good cause. During the pendency of any hearing requested, the cease and desist order shall remain in effect unless vacated or modified by the director.

(c) After the hearing, the director shall issue a final order that shall affirm, vacate, or modify the order in effect during the pendency of the hearing. If no hearing is requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated by the director.

(d) All hearings and rehearings shall be

public.

(e) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the respondent or the respondent's assets. The court shall not require the director to post a bond.

14482E-11Fees.14 The director shall charge and collect a fee of \$50 at the time of the filing of the offering circular or the amended offering circular pursuant to sectionChapter91 shall wherever applicable govern the rights, remedies, and procedures respecting the administration of this chapter.

(b) The director shall appoint, subject to applicable civil service laws, a competent person to administer this chapter. The director shall delegate to the administrator such powers, subject to the authority of the director, as may be necessary to carry out the provisions of this chapter.